

Hon. I. Predecki
County Auditor
Galveston County
Galveston, Texas

Dear Sir:

Opinion No. O-3722
Re: Section 3 of S.B. 469,
47th Legislature is un-
constitutional.

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"An Act, designated Senate Bill No. 469, passed at the Regular Session of the 47th Legislature, was approved by the Governor on June 10th, 1941, effective January 1st, 1942. I enclose a copy of this law.

"Section 3 of this Act, provides for the payment of fines and fees in misdemeanor cases, jurisdiction of which is transferred to the County Court of Galveston County, and all fines and fees paid to be deposited to the credit of the Road & Bridge Fund. This Section further provides that the County Judge and the County Clerk shall each be allowed the sum of \$600.00 per annum, payable in monthly installments, to be paid out of the Road & Bridge Fund, and same to be additional compensation to the maximum now received by said officials out of the Officers' Salary Fund. Provision is further made for an additional deputy clerk at a salary not to exceed \$125.00 per month, and this is also to be paid out of the Road & Bridge Fund.

"Your opinion is respectfully requested with reference to my authority to sign warrants for the extra compensation to the officials named in view of the provision in the Officers'

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Salary Law enacted at the Second Called Session of the 44th Legislature, same being Senate Bill No. 5, Chapter 465. Section 13 of the Salary Law provides for the payment of an annual salary in twelve equal installments not to exceed the amount received by the officers named in said section under laws existing August 24th, 1935. Section 18, paragraph (k), provides no Officer shall receive any ex-officio compensation where said Officer is on a salary basis.

"Kindly advise me with reference to the above and if the provisions in Senate Bill No. 469 are not in conflict with the existing law which provides for their compensation."

Senate Bill 469, 47th Legislature of Texas, reads in part as follows:

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

"Section 1. That Senate Bill No. 409, being Chapter 53, page 64 of the Special Laws of the Regular Session of the 43rd Legislature, 1933, be and it is hereby amended so as to hereafter read as follows:

"Section 1. That Articles 52-146, 52-147, 52-148, ~~52-149~~, 52-150, 52-151, 52-152, 52-153, 52-154, 52-155, and 52-156, of the Revised Civil Statutes of Texas, 1925, and Chapter 104 of the Local and Special Laws of Texas passed at the Regular Session of the 32nd Legislature relating to and creating the "County Court of Galveston County at Law" are hereby repealed. _____

"Section 2. That the jurisdiction of the "County Court of Galveston County at Law" be and it is hereby vested in the County Court of Galveston County, Texas, and all writs and process heretofore issued by said "County Court

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of Galveston County at Law" and all writs and process in misdemeanor cases heretofore issued by or out of the District Court of the Tenth Judicial District of Texas be and the same are hereby made returnable to the County Court of Galveston County, Texas. _____

"Section 3. All sums received in payment of fines and fees in all such misdemeanor cases, the jurisdiction of which is hereby transferred to the County Court of Galveston County, shall be paid to and deposited in the Road and Bridge Fund of said _____ County. The County Judge and the County Clerk of said Galveston County shall each be allowed by said County, to be paid from said Road and Bridge Fund, the sum of Six Hundred (\$600.00) Dollars per year, payable in equal monthly installments, as additional compensation for handling said misdemeanor cases and shall be in addition to all salaries now being paid to such officers from the Officers' Salary Fund of said County. The County Clerk of Galveston County shall have authority to appoint an additional Deputy Clerk to handle such misdemeanor cases to be paid a salary not to exceed One Hundred Twenty-five (\$125.00) Dollars per month by said County from the Road and Bridge Fund of said County.' _____

"Sec. 4. The fact that misdemeanor cases can be handled with more dispatch and more economically in the County Court and the crowded condition of the calendar create an emergency and an imperative public necessity that the Constitutional Rule requiring all bills to be read on three several days be suspended, and such Rule is suspended, and this Act shall take effect and be in force from and after January 1, 1942, and it is so enacted. _____"

Section 22 of Article 5 of our State Constitution, grants authority to the legislature to increase, diminish

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or change the civil and criminal jurisdiction of county courts by either local or general law. Sections 1 and 2 of the above quoted act are therefore valid.

However, Section 3 of the act providing additional compensation for the county clerk and county judge, and providing for the appointment of an additional deputy clerk and the payment of a salary to such deputy, is clearly unconstitutional as a local or special law attempting to regulate the affairs of a county, and where a general law can be made applicable. Almost the identical procedure was condemned in the case of *Duclos vs. Harris County*, 251 S. W. 569, affirmed by Supreme Court in 263 S. W. 562. Also see the cases of *Altgelt vs. Gutzeit*, 187 S. W. 222, affirmed by Supreme Court in 201 S. W. 400; *Ward vs. Harris County*, 209 S. W. 794; and the recent case of *Miller et al vs. El Paso County*, 150 S. W. (2d) 1000, (Supreme Court of Texas--Opinion delivered by Chief Justice Alexander).

You are therefore respectfully advised that it is the opinion of this department that section 3 of the above quoted act is unconstitutional and that you would have no authority to sign or approve warrants for the items mentioned in said section.

Very truly yours

ATTORNEY GENERAL OF TEXAS

BY

Wm. J. Fanning
Assistant

APPROVED JUL 9, 1941
Wm. J. Fanning

FIRST ASSISTANT
ATTORNEY GENERAL

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